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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
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MARC SPITZER
COMMISSIONER

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER IF THE JOINT) DOCKET NO. W-01656A-98-0577
APPLICATION OF SUN CITY WATER) SW-02334A-98-0577
COMPANY AND SUN CITY WEST)
UTILITIES COMPANY FOR APPROVAL OF)
CENTRAL ARIZONA PROJECT WATER)
UTILIZATION PLAN AND FOR AN) MOTION TO STRIKE
ACCOUNTING ORDER AUTHORIZING A)
GROUNDWATER SAVINGS FEE AND)
RECOVER OF DEFERRED CENTRAL)
ARIZONA PROJECT EXPENSES.)

The Sun City Taxpayers Association, Inc. ("SCTA") moves the Administrative Law Judge to the strike the respective rebuttal comments filed by the CAP Task Force ("CTF") and the Arizona Utility Investors Association ("AUIA") to Staff's, RUCO's and SCTA's comments regarding the updated Preliminary Engineering Report ("PER") and/or Recreation Center Golf Course Agreements submitted by Citizens Utilities Company ("Citizens"). The Administrative Law Judge must strike these rebuttal comments because they are inappropriate, patently unfair to the parties, and a blatant violation of the Commission's own Procedural Schedule set-out in Decision No. 62293.

A. THE COMMISSION IN DECISION NO. 62293 SETS-OUT THE PROCEDURAL SCHEDULE.

In Decision No. 62293, starting at page 20, line 25, the Commission orders Citizens, within 180 days of the effective date of the Decision, to submit the results of its updated "PER" supporting the proposed Groundwater Savings project including among other

1 things binding agreements with the Sun City and Sun City West Recreation Center Golf
2 Courses ("Recreation Center Golf Course Agreements").¹ At page 21, lines 4 - 7, of the
3 Decision, the Commission further orders that Staff and other interested parties may file,
4 within 60 days of Citizens' submission of the updated PRE, their comments thereto. Finally,
5 at page 21, lines 8 - 9, of the Decision, the Commission orders that Citizens may file, within
6 30 days, its response to Staff's and the other parties' comments to the updated PRE.
7
8 However, in no place in Decision No. 62293 does the Commission allow any party other than
9 Citizens to submit responsive comments to the comments submitted by Staff and other parties
10 to Citizens' updated PRE.

11 **B. CTF AND AUIA HAD THE OPPORTUNITY TO SUBMIT**
12 **COMMENTS, BUT CHOSE NOT TO FILE.**

13 On August 1, 2000, Citizens submitted its updated PRE. Within the time
14 allowed, Staff and other interested parties including RUCO and SCTA filed comments for, or
15 against, the validity of the proposed Groundwater Savings Project under the updated PRE.
16 CTF and AUIA had the same opportunity to file comments as Staff, RUCO and SCTA, but
17 apparently chose not to file any comments. On October 31, 2000, Citizens submitted the
18 Recreation Center Golf Courses Agreements. Within the time allowed, Staff and SCTA filed
19 their comments for, or against, the validity of the Recreation Center Golf Course Agreements.
20 Again, CTF and AUIA had the same opportunity to file comments as Staff and other parties,
21 but apparently chose not to file any comments.
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25 ¹ Citizens' deadline in regard to the binding golf course commitments was modified slightly by the Chief
26 Administrative Hearing Officer in his August 18, 2000 Procedural Order.

1 **C. CTF AND AUIA INAPPROPRIATELY FILED REBUTTAL**
2 **COMMENTS TO STAFF'S, SCTA'S AND RUCO'S COMMENTS.**

3 On December 18, 2000, Citizens filed its response to the comments submitted
4 by Staff, SCTA and RUCO. To SCTA's surprise and disbelief, CTF and AUIA also filed
5 comments, not in the form of comments to Citizens updated PRE as required by Decision No.
6 62293, but as rebuttal to the comments previously submitted by Staff, RUCO and SCTA.
7 This was inappropriate, patently unfair and a flagrant violation of the Procedural Schedule
8 set-out by the Commission in Decision No. 62293. Both CTF and AUIA had the same
9 opportunities as Staff, RUCO and SCTA to file comments for, or against, the validity of the
10 proposed Groundwater Savings Project under Citizens' updated PRE including the Recreation
11 Center Golf Courses Agreements. CTF and AUIA apparently made the strategic decision not
12 to do so, and instead chose to simply "lay-in-wait" until Staff, RUCO and SCTA submitted
13 their respective comments. The strategy apparently being to identify any parties that opposed
14 the results of the updated PRE and make rebuttal comments thereto.
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16 **D. THE ADMINISTRATIVE LAW JUDGE MUST STRIKE CTF'S AND**
17 **AUIA'S INAPPROPRIATE REBUTTAL COMMENTS.**

18 SCTA believes that the Administrative Law Judge must strike CTF's and
19 AUIA's rebuttal comments. These inappropriate rebuttal filings, if allowed to stand, would
20 make a mockery out of the Procedural Schedule set-out by the Commission in Decision No.
21 62293, which in the long run will undermine the authority of Commission to set-out and
22 notice fair and unbiased procedural schedules. Assuming that the Administrative Law Judge
23 strikes CFC and AUIA's rebuttal comments, CFC and AUIA could still have adequate
24 opportunity to rebut Staff, RUCO and SCTA in the appropriate context of an evidentiary
25
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1 hearing as allowed by Decision No. 62293. SCTA would not oppose this. Accordingly,
2 because CTF's and AUIA's respective rebuttal comments to the comments filed by Staff,
3 RUCO and SCTA regarding Citizens' updated PRE and the associated Recreation Center
4 Golf Course Agreements are inappropriately outside the scope of the Commission's noticed
5 procedural schedule set-out in Decision No. 62293, these rebuttal comments must be stricken.
6

7 RESPECTFULLY SUBMITTED this 10th day of January, 2001.

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17 An original and ten (10) copies of
18 the foregoing are filed this 10th
19 day of January, 2001 with:

20 Docket Control
21 Arizona Corporation Commission
22 1200 West Washington
23 Phoenix, Arizona 85007

24 A copy of the foregoing
25 mailed or hand-delivered this 10th
26 day of January, 2001 to:

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